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97-267 JUL 31 1997

OFFICE OF THE CLERK

No. 97-

In the

Supreme Court of the United States

October Term, 1997

BEVERLY MYERS,

Petitioner,

v.

MARY MOFFITT, ET AL.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE NEW HAMPSHIRE SUPREME COURT.

PETITION FOR WRIT OF CERTIORARI.

BEVERLY MYERS
23 Gould Street
Melrose, Massachusetts 02176
(617) 665-0394

Pro Se Petitioner

QUESTIONS PRESENTED.

I. Was a closed door meeting of counsel and the Judge from which I was excluded, while representing myself, and at which all decisions were made before arguments, a violation of my rights and a breach of judicial ethics and/or conduct"

II. Was the Court Order, which stated the property was to be sold in thirty days, violated when the sale didn't take place for 45 days?

III. Did Mr. Dahar and the Buyer of my property have a conflict?

IV. Was the Stipulation entered into by my prior attorney valid and enforceable if I never saw it or knew of it?

LIST OF PARTIES.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Marc L. Van DeWater, Esquire

Victor Dahar, Esquire

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Commonwealth v. Blonden, 324 Mass. 564 (1949) 2
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STATUTES AND RULES.

United States Constitution
Articles V and XIV 1, 2

OPINIONS BELOW.

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

The opinion of the highest state court to review the merits to the petition is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

United States Constitution Articles V and XIV.

STATEMENT OF THE CASE.

I represented myself at a hearing on April 3, 1995 regarding motions filed by Victor Dahar, Esquire with respect to his fees and the disbursement of some money to my cousins after land owned by me and my cousins was sold by Attorney Dahar to a business associate of his. I argued that the sale was invalid since it occurred after the Court ordered date and I also argued that if my cousins were going to be repaid expenses then I should be credited with monies I had expended as well. Finally, I was shocked to hear that my former attorney had Stipulated that the balance of the money went to my cousins and I and my deceased sister not only did not share in our one half of the proceeds, but that we actually owed money. The Judge, before hearing arguments, called counsel into chambers. When I attempted to join them, I was not allowed because I was not an attorney although I was representing myself. After a conference in chambers, the Judge and the lawyers came back into the court and I learned I would lose everything, that Mr. Dahar and my cousins won everything and to boot I owed money.

REASONS FOR GRANTING THE PETITION.

To protect my rights and all others who appear "pro se" in the Courts of this country under Article V and XIV of the United States Constitution, the comparable articles of the state constitutions and because justice and equity require that the rights of pro se parties be protected at every stage of litigation. Cases relied upon: *Commonwealth* v. *Blonden*, 324 Mass. 564 (1949) and *Fogarty* v. *Commonwealth*, 406 Mass. 103 (1989).

CONCLUSION.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Beverly Myers (ALL)

BEVERLY MYERS, PRO SE
23 Gould Street
Melrose, Massachusetts 02176
(617) 665-0394

PROOF OF SERVICE.

I, Beverly Myers, do swear or declare that on this thirty-first day of July, 1997, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Marc L. Van DeWater, Esquire - 633 Second Street, Manchester, NH 03102

Victor W. Dahar, Esquire- 20 Merrimack Street, Manchester, NH 03101.

I declare under penalty of perjury that the foregoing is true and correct.

Beverly Myers, (MLA)

BEVERLY MYERS, PRO SE

Dated: July 31, 1997

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APPENDIX A.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 95-609, Mary E. Moffitt & a. v. Jennie Maude Herrick & a., the court upon May 2, 1997, made the following order:

Having considered the briefs and oral arguments of the parties, the court concludes that a formal written opinion is not necessary for the disposition of this appeal. Assuming without deciding that the issues presented were properly preserved, but see Super. Ct. R. 77-A, the court concludes that they are without merit. The decision below is affirmed.

Affirmed.

Distribution:
Clerk, Hillsborough County Superior Court (North)
E-85-016
Ms. Beverly Myers
Marc L. Van DeWater, Esquire
Victor Dahar, Esquire
Mr. Robert H. Moffitt
Randall E. Wilbert, Esquire
Mr. Edward T. Moffitt
James E. Ritzo, Esquire
Kenneth E. Churbuck, Esquire
Honorable Bernard Hampsey
Donna Nadeau, Supreme Court
File

Howard J. Zibel,
Clerk

APPENDIX B.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT
NORTHERN DISTRICT OF HILLSBOROUGH COUNTY

John M. Safford, Clerk
300 Chestnut Street
Manchester, N.H. 03101-2490
(603) 669-7410

August 4, 1995

NOTICE OF DECISION

No: 85-E-016

Mary E. Moffitt, Et al V Jennie Maude Herrick, Et al

You are hereby notified that on August 3, 1995 the following order was entered in the above matter:

RE: Order Regarding Pending Motion

(SEE COPY OF ORDER ATTACHED HERETO)
(Hampsey, J.)

JMS/jtb

Copy to: Victor W. Dahar, Esq.
Marc L. Van de Water, Esq.
Kenneth E. Churbuck, Esq.
James E. Ritzo, Esq.
Beverly Myers, Pro Se, 33 Groveland Rd., Melrose, MA 02176
Robert Hansom Moffitt, PO Box 429, Victorville, CA 92392

APPENDIX C.

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS. SUPERIOR COURT
Northern District

MARY E. MOFFITT, et al.

v.

JENNIE MAUDE HERRICK, et al.
#85-E-016

ORDER REGARDING PENDING MOTION

The court conducted a record hearing today with respect to pending motions. More particularly, Commissioner Dahar filed a motion seeking authority to pay Robert H. Moffitt the sum of $3,502.95, representing the real estate taxes paid by Mr. Moffitt with respect to the subject property in April of 1993 for the 1991 tax year. If the taxes had not been paid at that time by Mr. Moffitt, the property might have gone to tax sale and any opportunity to sell the property would have been lost.

The second motion by Commissioner Dahar pertains to his fees. His reasonable time charges yielded a bill of $8,280. Nevertheless, as a gesture to the parties, much appreciated by this court, Mr. Dahar reduced his bill to $6,000.

In addition to Commissioner Dahar, Attorney Thomas appeared for the plaintiffs. He informed the court that he had no objection to either motion.

The final party in attendance was Beverly Myers, one of the defendants in this matter. During the course of the hearing, Mrs. Myers attempt to raise various issues that were not before

the court. More specifically, she asked the court to consider a breach of contract claim that appeared to be without merit. Various documents were provided to the court by Mrs. Myers and the court, after careful review, concluded that the documents were not relevant and would receive no further consideration.

In accordance with the prior orders of this court, Commissioner Dahar sold the subject premises for $43,000. From a review of the file, it would seem that the purchase price was at or in excess of the fair market value at that time. Although the transfer of title took place beyond the scheduled closing date, the delay was necessary because of apparent title defects that were resolved by the parties. Thus, the closing eventually proceeded as anticipated.

The closing proceeds are being held by Commissioner Dahar in an interest-bearing account. At the present time, subject to a modest interest increase of about $40 respecting the interest accrued since June 30, 1995, Attorney Dahar is holding $26,956.43. Upon due consideration, both motions before the court are GRANTED. Therefore, Commissioner Dahar shall be paid his fees of $6,000 and he shall further reimburse Robert Moffitt for the amount paid for real estate taxes for 1991, said reimbursement to be in the amount of $3,502.94. The balance remaining shall be paid over to Attorney Thomas on behalf of the plaintiffs in partial satisfaction of their judgment. Thereafter, as the Commissioner shall have completed his duties in all respects, his appointment as Commissioner shall terminate and Mr. Dahar shall be discharged of all further responsibilities with respect to this case. Mr. Dahar's accounting or report dated May 26, 1995, is hereby approved.

Having reviewed the stipulation of the parties and the order of this court approved on August 3, 1993, the court finds that the plaintiffs are entitled to a judgment of $28,667 as of

September 2, 1993. Thereafter, interest on the judgment has accrued at the rate of 10 percent per annum. The court finds that the interest from September 2, 1993 to today, accruing at the rate of $7.96 per day for 700 days, now totals $5,572. Thus, the court determines the total judgment outstanding at this time in favor of the plaintiffs to be $34,239. After applying the net proceeds from the sale of the real estate, the balance outstanding on the judgment will be in the vicinity of $17,000. The defendants in this matter, in addition to Beverly Myers, are the heirs/legatees of the Estate of Eleanor Neff.

Finally, the within order shall constitute the final order of this court with respect to any proposed appeal to the New Hampshire Supreme Court.

So ordered.

Date: August 3, 1995

_____

Bernard J. Hampsey, Jr.
Presiding Justice

APPENDIX D.

STATE OF NEW HAMPSHIRE
SUPERIOR COURT
NORTHERN DISTRICT OF HILLSBOROUGH COUNTY

No. E-85-016

MARY E. MOFFITT, et al v. JENNIE M. HERRICK, et al

MOTION FOR CONTINUANCE

Now comes the defendant, Beverly Myers, in the above entitled action and moves the Court to continue the hearing on Commissioner Victor Dahar's Motion for Authority to pay Robert Moffitt and to pay himself in the above matter scheduled for August 3, 1995.

For the reasons therefore, Beverly Myers states that she and her mother Jennie Herrick paid the Real Estate Taxes from 1981 to 1989 and have never received credit for said payments. The same reason for paying Edward Moffitt, who appears has already been paid directly by Commissioner Dahar, without permission of the Court and Robert Moffitt would apply to payments made by the defendant Beverly Myers and her mother.

In addition, Beverly Myers paid for a new roof, insurance on property and to remove the barn on the property and no credit has been given to Beverly Myers for these improvements.

Further, Defendant Beverly Myers needs time to research the question of whether the sale by Commissioner Dahar was a

nullity, since the court ordered Commissioner Dahar to sell the property within 30 days on April 2, 1995, and the sale did not take place until May 18, 1995. The question is whether this is a Breach of a Court Order and therefore a nullity.

Wherefore, your defendant, Beverly Myers respectfully moves the Court to continue the matter for at least thirty days to allow her time to provide the necessary documentation to substantiate the above claim and also allow her sufficient time to research the law on whether the sale is a nullity.

Beverly Myers
Pro Se
33 Groveland Road
Melrose, Massachusetts 02176
(617) 665-4836

APPENDIX E.

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT
NORTHERN DISTRICT

Mary E. Moffitt, et al

v.

#E-85-016

Jennie Maude Herrick, et al

OBJECTION TO MOTION FOR CONTINUANCE

NOW COMES, Victor W. Dahar, the Duly Appointed Commissioner in the above-captioned matter and objects to the Motion for Continuance filed by Beverly Myers and states as follows the reasons:

1. This matter has been pending prior to the Commissioner's Appointment for many, many years in the Hillsborough County Superior Court.

2. That the Commissioner was appointed on May 23, 19990 and assumed his duty as Commissioner on that date.

3. That the allegations and reasons for a continuance requested by Beverly Myers have no merit in view of the fact that the Commissioner's Appointment was made on May 23, 1990 and all acts that took place subsequent to that date were conducted in accordance with the Commissioner's duties and obligations.

4. That any and all real estate taxes paid subsequent to the appointment of the Commissioner on May 23, 1990, were necessary in order to preserve the asset for sale because the real estate would have been forfeited to the Tax Collector for nonpayment of real estate taxes.

5. That at each instance when the real estate taxes were paid by an interested party, it was for the purpose of avoiding having the Tax Collector convey the real estate to the City of Manchester. Each instance of taxes were necessary because the redemption period to redeem the taxes was about to expire.

6. All efforts by the Commissioner were necessary subsequent to 1990 for the purpose of preserving the Estate for sale.

7. In any event, the matter has been pending for many years and to continue at this time in this matter would be unreasonable.

WHEREFORE, Victor W. Dahar, the Duly Appointed Commissioner prays as follows:

1. That the Motion for Continuance filed by Beverly Myers be denied forthwith.

2. And for such other relief as may be deemed just.

Dated:

/s/_____
Victor W. Dahar
Duly Appointed Commissioner
20 Merrimack Street
Manchester, NH 03101
(603) 622-6595

CERTIFICATE OF SERVICE

I certify that a copy of the within Objection to Motion for Continuance has been sent to the following parties at the following address by regular first class pre-paid postage:

Kenneth E. Churbuck, Esq.
142 Main Street
Nashua, NH 03060

Marc L. Van De Water, Esq.
Thomas & Utell
633 Second Street
Manchester, NH 03102

Ms. Beverly Myers, pro se
33 Groveland Road
Melrose, MA 02176

Thayne Turner
79 Minot Street
Manchester, NH 03109

James E. Ritzo, Esq.
3168 Lafayette Road
P.O. Box 1137
Portsmouth, NH 03802-1138

Mr. Edward T. Moffitt
68 Town Neck Road
Sandwich, MA 02563

Mr. Robert H. Moffitt
P.O. Box 429
Victorville, CA 92392

Randall E. Wilbert, Esq.
One Elm Street
Nashua, NH 03060

/s/_____
Victor W. Dahar

APPENDIX F.

THE STATE OF NEW HAMPSHIRE

NORTHERN COUNTY OF
HILLSBOROUGH, SS. SUPERIOR COURT

Mary E. Moffitt, et al

v.

Jennie Maude Herrick, et al

E-85-016

OBJECTION TO MOTION FOR CONTINUANCE

NOW COME Ed Moffitt and Thayne Turner, by and through their attorneys, Thomas, Utell, Van De Water & Raiche, and respectfully objects to the Motion for Continuance in the above-reference matter and in support state as follows:

1. The Motion for Continuance filed by Beverly Myers sets forth no grounds to justify a continuance.

2. Beverly Myers has had a full and fair opportunity to raise and litigate all of the issues set forth in his Motion for Continuance since 1985 and during the course of her two Supreme Court Appeals.

3. Beverly Myers' Motions is a further frivolous attempt to delay resolution of this matter.

4. Beverly Myers has filed no objection to Commissioner's Motion currently scheduled for a hearing on August 3, 1995.

5. Beverly Myers has previously entered into an agreement approved by Order of this Court dated August 12, 1993 entitling Edward Moffitt and Thayne Turner to the remaining sale proceeds, after payment of Commissioner's fees. After payment of the remainder of the sale proceeds to Edward Moffitt and Thayne Turner, there will still exist a deficiency due from Beverly Myers to Edward Moffitt and Thayne Turner under the Court approved Agreement.

6. The Certificate of Service executed by Beverly Myers indicates that she has failed to forward a copy of her Motion for Continuance to Commissioner Victor W. Dahar, whose Motion is the one on for hearing August 3, 1995.

WHEREFORE, your Defendants respectfully requests this Honorable Court:

A. Deny the Motion for Continuance filed by Beverly Myers;

B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,
Ed Moffitt and Thayne Turner,
By their attorneys,
Thomas, Utel, Van De Water & Raiche

Dated: July 25, 1995

/s/_____
Marc L. Van De Water, Esquire
633 Second Street
Manchester, NH 03102
(603) 668-2027

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Objection to Motion for Continuance has been forwarded this date via first class mail, postage pre-paid to Kenneth E. Churbuck, Esquire, 412 Main Street, Nashua, NH 03060; Ms. Beverly Myers, Pro Se, 33 Groveland Street, Melrose, MA 02176; Victor W. Dahar, Esquire, 20 Merrimack Street, Manchester, NH 03101; James E. Ritzo, Esquire, Brigham, Ritzo & Harrington, P.A., PO Box 1137, Portsmouth, NH 03802-1137; Robert H. Moffitt, PO Box 429, Victorville, CA 92392; Randall E. Wilbert, Esquire, One Elm Street, Nashua, NH 03060; Ed Moffitt and Thayne Turner.

Dated: July 25, 1995

/s/_____
Marc L. Van De Water, Esquire

BEST AVAILAB

APPENDIX G.

STANDARD FORM
PURCHASE AND SALE AGREEMENT

1 PARTIES AND MAILING ADDRESSES (fill in)

THIS AGREEMENT made this 19th day of January, 1995
Between
The SELLER Victor W. Dahar Hillsboro Cy.Court Appointed Comm.
of 30 Merrimack street City Manchester State NH Zip 03101
and
The BUYER Louis Pichette
of 366 Belmont St. City Manchester State NH Zip 03103

2 DESCRIPTION (fill in and include title reference)

WITNESSETH That the SELLER agrees to sell and convey, and the BUYER agrees to buy certain real estate located in Manchester, NH known as or described as Land & Bldg. Located at 1745 Candia Rd., Manchester, NH. New Englander type vacant residence with 6.45 acres more or less.

County Hillsboro Book ____ Page ____ Date ____

3 BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES (fill in if applicable)

Included in the sale as part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith including, if any,
None

Items to be transferred to the BUYER in "as is" condition and not to be considered part of the sale are (if none, state "none")
None

Not included in the sale as part of the premises are the following items (if none, state "none")
None

4 PURCHASE PRICE (fill in)

The SELLING PRICE is Forth-Three Thousand Dollars $ 43,000.
Deposit receipt of which is hereby acknowledged in the form of Check
is to be held in an escrow account by Cliff Harris, Escrow Agent, in the sum of $ 1,000.
Additional deposit will be paid on or before $
CASH, CERTIFIED CHECK or BANK DRAFT on date of transfer of title in the sum of $ 42,000.

5 TITLE DEED (fill in)

DEED Insurable Title shall be conveyed by a Commissioner's deed, and shall be free and clear of all encumbrances except usual public utilities serving the property and restrictive covenants of record

6 TIME FOR PERFORMANCE DELIVERY OF DEED (fill in)

TRANSFER OF TITLE On or before Within 30 days following Court Approval at Local Legal Office

TITLE If BUYER desires an examination of title he shall pay the cost thereof. If upon examination of title it is found that the title is not insurable, at the BUYER'S option this agreement shall become void and the SELLER hereby authorizes the Escrow Agent to return BUYER'S deposit in full without recourse to the parties hereto

7 INSURANCE (insert amounts)

INSURANCE The buildings on said premises shall, until the full performance of this agreement, be kept insured against Fire, with Extended Coverage by the SELLER. In case of loss, all sums recoverable from said insurance shall be paid or assigned, on delivery of deed to the BUYER, unless the premises shall previously have been restored to their former condition by the SELLER, or, at the option of the BUYER, this agreement may be rescinded and SELLER hereby authorizes Escrow Agent to return the BUYER'S deposit in full without recourse to the parties hereto if loss exceeds $ 7500. The SELLER shall provide evidence of current insurance coverage to the BUYER upon written request

8 POSSESSION AND CONDITION OF PREMISES (fill in)

Full possession of the premises, free of all tenants and occupants, except the tenants as provided herein below, is to be delivered to the BUYER on or before Closing Date, the said premises to be then in the same condition in which they now are, reasonable wear and tear excepted
The SELLER also agrees that the premises will be delivered to the BUYER in "broom clean" condition. The BUYER shall have the right to inspect the premises for compliance with this paragraph prior to delivery of the Deed upon reasonable notice to the Broker
EXCEPTIONS Building to be transferred "as is".

9 ADJUSTMENTS (fill in)

Special assessments, taxes, rents, condominium fee, water, sewage bills and fuel in storage shall be prorated as of Date of Closing

10 AGENCY DISCLOSURE (fill in A or B)

BUYER(S) and SELLER(S) acknowledge and understand that Cliff Harris Realtor (Agency and Agent) represent the interest of the SELLER and

A) None (Sub-Agency and Sub-Agent) also represent the interest of the SELLER

OR

B) None (Buyer Agency and Agent) represent the interest of the BUYER

11 BUYER'S DEFAULT DAMAGES

If the BUYER shall default in the performance of his obligations under this agreement, the amount of the deposit may, at the option of the SELLER, become the property of the SELLER as reasonable liquidated damages

In the event of any dispute relative to the deposit monies held in escrow, the Escrow Agent may, in its sole discretion, pay said monies into the Clerk of Court of proper jurisdiction in an Action of Interpleader, providing each party with notice thereof, at the address recited herein, and thereupon the Escrow Agent shall be discharged from its obligations as recited therein, and each party to this Agreement shall thereafter hold the Escrow Agent harmless in such capacity. Both parties hereto agree that the Escrow Agent may deduct the cost of bringing such interpleader action from the deposit monies held in escrow prior to the forwarding of same to the Clerk of such Court.

BUYER'S initials ____ SELLER'S initials V.W.D.

BUYER'S initials ____ SELLER'S initials AS COMMISSIONER

GSABR 2-93 REALTOR® GREATER SALEM AREA BOARD OF REALTORS, INC

F-21

LE COPY

4 MORTGAGE CONTINGENCY CLAUSE (fill in)

FINANCING: This Agreement is contingent upon BUYER(S) obtaining financing under the following terms: AMOUNT $ N/A TERM/YEARS N/A RATE N/A TYPE OF MORTGAGE N/A

Application for mortgage must be made on or before N/A, 19 ____, failing which this contingency shall be deemed to have been waived. On or before N/A 19 ____, BUYER(S) shall provide SELLER or SELLER'S agent with written evidence, acceptable to SELLER, as to BUYER'S ability or inability to obtain financing. TIME BEING OF THE ESSENCE. Upon such notification, if the BUYER(S), having used all due diligence, is unable to obtain financing, this Agreement shall become null and void and SELLER hereby authorizes Escrow Agent to return BUYER'S deposit in full without recourse to the parties hereto. In the event BUYER(S) fails to comply with such written notification, the financing contingency shall lapse or, at the SELLER'S option, this Agreement shall become void and the SELLER hereby authorizes the Escrow Agent to return BUYER'S deposit in full without recourse to the parties hereto.

13 FHA OPTION CLAUSE (fill in if applicable and initial)

It is expressly agreed that, notwithstanding any other provisions of this contract, the BUYER shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise, unless the SELLER has delivered to the BUYER a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property (excluding closing costs) of no less than $ ____, which statement the SELLER hereby agrees to deliver to the BUYER promptly after such appraised value statement is made available to the SELLER. The BUYER shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the appraised valuation made by the Federal Housing Commissioner. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the property. The BUYER should satisfy himself/herself that the price and condition of the property are acceptable.

14 VA OPTION CLAUSE (initial if applicable)

It is expressly agreed that, notwithstanding any other provisions of this contract, the BUYER shall not incur any penalty by forfeiture of earnest money or otherwise, or be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Veterans Administration. The BUYER shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of reasonable value established by the VA.

15 INSPECTION (fill in and initial)

The BUYER(S) are encouraged to seek information from professionals regarding any specific issue or concern.

This Agreement is subject to home inspection(s) by a qualified person(s) normally engaged in the business of conducting such inspections, at BUYER'S expense, on or before N/A, 19 ____, showing the building to be free of major structural flaws and/or major defects and that its systems (including plumbing or heating or electrical, etc.) are fully operable.

BUYER(S) TO INITIAL ADDITIONAL ITEMS TO BE INSPECTED (AT BUYER'S EXPENSE):

WATER ____ SEPTIC/SEWER SYSTEMS ____
RADON ____ INSECT INFESTATION ____
OTHER DESCRIPTION ____

If the BUYER fails to notify ____, Agent of the Seller, in writing that the inspection results are unacceptable on or before ____, this condition shall be waived and the Agreement shall continue without this condition and without liability to SELLER or SELLER'S Agent. In the event major structural flaws and/or major defects are found, they will be corrected at the SELLER'S expense if BUYER and SELLER both agree, otherwise this Agreement shall become null and void and SELLER hereby authorizes Escrow Agent to return BUYER'S deposit in full without recourse to the parties hereto.

OR

I/We do not wish to have an inspection of the property and hereby waive the option as stated above ____ (BUYER(S) initials)

16 ACKNOWLEDGEMENT

All representations, statements, and agreements heretofore made between the parties are merged in this agreement which alone fully and completely expresses their respective obligations, and this agreement is entered into by each party after opportunity for investigation, neither party relying on any statements or representations not embodied in this agreement, made by the other or on his behalf.

BUYER acknowledges that: information was supplied by the SELLER and has not been checked for accuracy by the Agent(s); public information was subject to BUYER'S verification; each item was subject to direct inquiry by the BUYER, and the BUYER has been so advised, and the Agent(s) makes no representations regarding the condition of the premises, structure(s) thereon or the mechanical components thereof.

17 ATTACHMENT

Attached Sellers Representation of Property becomes an integral part of this agreement.

18 ADDENDUM(S) TO AGREEMENT (fill in)

Attached addendum(s) are incorporated and become an integral part of this agreement. (if none, state "none") None

19 ADDITIONAL PROVISIONS (fill in) (if none, state "none")

Sale to be authorized by Victor W. Peter Hillsboro County Court Appointed Commissioner WITH Court Approval ~~SUBJECT TO Court Approval~~ V.W.P.

NOTICE: THIS IS A LEGAL DOCUMENT THAT CREATES CERTAIN BINDING OBLIGATIONS. IF YOU DO NOT UNDERSTAND IT, CONSULT AN ATTORNEY BEFORE SIGNING. This agreement shall be binding upon the heirs, executors, administrators and assigns of both parties.

I HAVE READ AND UNDERSTAND THIS DOCUMENT

Witness Clifford L. Flesia	1/19/95 Date	Buyer Louise T. Pinkette	1-19-95 Date	002-44-9219 Soc. Sec. or Fed I.D.
Witness	Date	Buyer	Date	Soc. Sec. or Fed I.D.
Witness	Date	Seller Victor W. Peter COMMISSIONER	1-20-95 Date	02-0358076 Soc. Sec. or Fed I.D.
Witness	Date	Seller	Date	Soc. Sec. or Fed I.D.

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APPENDIX H.

STATE OF NEW HAMPSHIRE

NORTHERN DISTRICT OF
HILLSBOROUGH, SS. SUPERIOR COURT

Mary E. Moffitt, et al

v.

Jennie Maude Herrick, et al

E-85-16

MOTION TO ENFORCE SETTLEMENT AGREEMENT AND REQUEST FOR ATTORNEY'S FEES AND COSTS

NOW COME Ed Moffitt and Thayne Turner, Plaintiffs in the above-captioned action, by and through their attorneys, Thomas & Utell, and respectfully move this Honorable Court to enforce the parties Agreement to settle the above-referenced matter.

IN SUPPORT, your Plaintiffs respectfully state as follows:

1. The subject case was originally commenced as a Petition to Partition by Mary E. Moffitt who passed away after the subject action was commenced.

2. During the course of the litigation of the underlying action, and an appellate action to the New Hampshire Supreme

Court, Defendant Jennie Maude Herrick additionally passed away.

3. The remaining Plaintiffs and Defendants are the various children of the original Plaintiffs, who are entitled to-share in certain property located on Candia Road.

4. Attorney Victor Dahar was appointed as a commissioner by this Court for purposes of selling the subject real estate.

5. Based on the correspondence of Commissioner Dahar that the subject property was to be sold at auction, Defendants tendered an offer to Plaintiffs, Ed Moffitt and Thayne Turner by letter of counsel dated April 5, 1993 (a copy of which is annexed hereto as Exhibit A and incorporated herein by reference), whereunder Ed Moffitt and Thayne Turner were each to be paid the sum of $14,333.00.

6. By phone call of April 20, 1993, counsel for Ed Moffitt and Thayne Turner informed counsel for Defendants that the offer set forth in the April 5, 1993 letter was accepted. The subject acceptance was immediately followed up in writing by a letter sent via fax and first-class mail on the same date, namely April 20, 1993 (a copy of said letter being annexed hereto as Exhibit B and incorporated herein by reference).

7. As part of said April 20, 1993 letter, counsel for Ed Moffitt and Thayne Turner specifically inquired and requested information as to the time frame for Defendants tendering the settlement sum, together with confirmation that Attorney Wilbert would take the necessary steps to notify Commissioner Dahar, prepare the Quitclaim Deeds and any documents necessary for filing with the Court.

8. By letter dated May 14, 1993, counsel for Ed Moffitt and Thayne Turner followed up with Attorney Wilbert the previous request set forth in the acceptance letter of April 20, 1993, and once again requested a prompt reply (a copy of this May 14, 1993 letter is annexed hereto as Exhibit C and incorporated herein by reference).

9. After forwarding the May 14, 1993 letter, counsel for Ed Moffitt and Thayne Turner attempted on a weekly basis to raise Attorney Wilbert by phone. To date, counsel has received no reply to any of these numerous phone call attempts.

10. By phone calls on both Wednesday and Thursday of last week, counsel for Ed Moffitt and Thayne Turner informed the person taking messages for Attorney Wilbert, that if no reply was received on or before close of business on Friday, a Motion to Enforce the Subject Settlement Agreement would be filed with the Court.

11. As of this date, counsel for Ed Moffitt and Thayne Turner has received no reply to either the April 20 or the May 14, 1993 letters, nor the numerous phone call attempts to conclude the parties' Settlement Agreement.

12. The Defendants failure to comply with the specific terms of the parties' Settlement Agreement constitutes bad faith conduct requiring the Plaintiffs to incur unnecessary additional attorney's fees and costs associated with enforcing a clearly defined right, and the Plaintiffs are entitled to recover all reasonable attorney's fees and costs associated with the bringing of this Motion. Harkeem vs. Adams, 117 NH 687 (1977).

WHEREFORE, your Plaintiffs respectfully request this Honorable Court:

A. Order the Defendants to make payment in the amount of $28,667.00, reflecting the total sum due Ed Moffitt and Thayne Turner in accordance with the Settlement Agreement as set forth in the April 5, 1993 letter of Attorney Randall Wilbert, counsel for Defendants;

B. Award the Plaintiffs their reasonable attorney's fees and costs associated with the bringing of this Motion to Enforce Settlement Agreement.;

C. Grant such other and further relief as may be just and equitable.

Respectfully submitted,
Ed Moffitt and Thayne Turner,
By their attorneys,
THOMAS & UTELL

Dated: 6/22/93

/s/_____
Marc L. Van De Water, Esquire
633 Second Street
Manchester, NH 03102
(603) 668-2027

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Enforce Settlement Agreement and Request for Attorney's Fees and

Costs has been forwarded on this date via first-class mail to Randall Wilbert, Esquire and Robert Hanson Moffitt, Pro se, PO Box 429 Victorville, California 92393-0429.

Dated: 6/22/93

/s/_____
Marc L. Van De Water, Esquire

APPENDIX I.

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. NORTHERN DISTRICT
SUPERIOR COURT

#E-85-16

Mary Moffitt, et al

v.

Jennie Maude Herrick, et al

STIPULATION

NOW COME the plaintiffs and the defendants, Beverly Myers and the Estate of Eleanor Neff, by and through counsel, and stipulate and agree as follows:

1. The defendants shall pay $28,667.00 to Thomas & Utell, attorneys for plaintiffs, to be held in escrow pending the closing transaction. said closing transaction shall constitute full and final resolution of the above-captioned dispute.

2. Payment of the $28,667.00 shall be made on or before the close of business on Thursday, September 2, 1993.

3. In the event defendants fail to make the required payment of $28,667.00 on or before September 2, 1993, judgment for the plaintiffs shall enter in the amount of $28,667.00. Interest on said amount shall accrue at the rate of

ten (10%) percent per annum, commencing September 2, 1993.

4. In addition to the remedies set forth in Paragraph 3 above, if defendants default in their obligation to pay $28,667.00 on or before September 2, 1993, the commissioner shall forthwith place the subject real estate for sale. The proceeds from the sale of the real estate, after taxes, liens, broker's fees and other necessary expenses are satisfied, shall first be paid to plaintiffs for any amount then owing as calculated in Paragraph 3 above.

RESPECTFULLY SUBMITTED,

Beverly Myers and
Estate of Eleanor Neff
By and Through Their Attorneys
LAW OFFICE OF
RANDALL E. WILBERT

Date: 8/3/93 /s/_____
By: Andrew D. Wickwire

Edward Moffitt and Thayne Turner
By and Through Their Attorneys
THOMAS & UTELL

Date: August 3, 1993 /s/_____
By: Glenn Raiche

APPENDIX J.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT
NORTHERN DISTRICT OF HILLSBOROUGH COUNTY

John M. Safford, Clerk
300 Chestnut Street
Manchester, N.H. 03101-2490
(603) 669-7410

August 12, 1993

NOTICE OF DECISION

No: 85-E-016

Mary Moffitt, Et al V Jennie Maude Herrick, Et al

You are hereby notified that on August 3, 1993 the following order was entered in the above matter:

RE: Stipulation

"Approved & so ordered." (Hampsey, J.)

JMS/jtb

Copy to: Marc L. Van de Water, Esq.
Randall Wilbert, Esq.
James E. Rizzo, Esq.
Robert Hanson Moffitt, 14259 Anacapa St., Box 429
Victorville, CA 92393-0429